for all telecommunications carriers. Congress outlined a methodology that not only established minimum interconnection obligations, but also provided a policing mechanism for implementation. Section 251(b), for instance, obligates all LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[156/] Section 251(c)(2) requires all incumbent LECs to provide just, reasonable and discriminatory access to unbundled network elements, at any "technically feasible point within the carrier's network.[157/] Section 252, in turn, permits LECs and other telecommunications carriers to enter into voluntary, negotiated interconnection agreements and creates a state arbitration and agreement approval process.[158/]

Congress took no less care to ensure that the TCA did not affect prior legislative enactments directed specifically at federal regulation of CMRS interconnection. Recognizing the breadth of Section 251's interconnection provisions, Congress specifically incorporated Section 251(i) into the statute -- a savings clause -- to preserve the Commission's authority over interconnection bestowed under provisions unmodified and undisturbed by the TCA. Specifically, Section 251(i) provides that "nothing in [Section 251] shall be construed to limit or otherwise affect the Commission's authority under [S]ection 201."[159/]

156/ See 47 U.S.C. § 251(b)(5).

157/ See 47 U.S.C. § 251(c)(2).

158/ See 47 U.S.C. § 252.

159/ The legislative history of this provision confirms that "[n]ew subsection 251(i) makes clear the conferees' intent that the provisions of new section 251 are in addition to,
(continued...)

Because the 1993 Budget Act already gives the FCC exclusive jurisdiction to respond to requests of CMRS providers for interconnection to LEC networks under Section 201, Section 251 of the TCA "in no way limits or affects" this authority.[160/] Rather, Section 251(i) of the TCA makes plain that the interconnection provisions of Section 251 only amplify the power the FCC already possessed.[161/]

Similarly, nothing in Section 252 of the TCA restricts the Commission from adopting a compensation policy for all LEC-to-CMRS interconnection. Section 252 states that, upon receiving a request for interconnection pursuant to Section 251, an incumbent LEC may negotiate an agreement pursuant to the statutory procedures adopted in Section 252. This language does not place restrictions on the Commission's power to establish a LEC-to-CMRS interconnection policy. Further, because Section 252 is not triggered unless a request for interconnection is made under Section 251, and because Section 251 does not prevent the Commission from establishing an interconnection policy for LEC-to-CMRS traffic under its

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159/ (...continued)
and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act. See Telecommunications Act of 1996, Conference Report to accompany S.652 at 123 (reprinted in 142 Cong. Rec. H1107 (daily ed. January 31, 1996)) (emphasis added).

160/ The Commission's 201 authority permits it to set the rates, terms and conditions of interconnection for carriers subject to the FCC's jurisdiction. See also 47 U.S.C. § 332(c)(1)(B).

161/ Section 253(e) of the Act also recognizes the continued vitality of the FCC's preemptive powers under Section 332(c)(3). Section 332(c)(3) represents a broad grant of federal power in the field of CMRS regulation. Therefore, by leaving this section intact, Congress intended that the FCC continue to regulate CMRS -- including regulating the means of compensation for LEC-to-CMRS interconnection.

general Section 201 powers, Section 252 is not relevant in determining the FCC's jurisdiction over LEC-to-CMRS interconnection policies.

Arguments made by PacBell and Bell Atlantic that Section 251(i) should not be used "to try to slip the Commission out the back door of the 251/252 regime" ignore the plain reading of the TCA and violate well-established rules of statutory construction.[162/] The LECs would have the FCC ignore Section 251(i) completely or, worse, give it effect only when it is beneficial to LEC interests.[163/] In essence, PacBell and Bell Atlantic would not only negate Section 251(i), but also would read the 1993 Budget Act amendments to sections 2(b) and 332 right out of the statute. The claim that 251(i) has no effect violates the basic principle of statutory construction that requires interpreting legislation to give effect to all of its provisions.[164/] Rendering Section 251(i) superfluous obviously could not be an accurate interpretation of Congress' intent.

Finally, to decide that Section 251 eliminated the existing jurisdiction over CMRS interconnection would require a finding that the TCA implicitly repealed all or parts of

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162/ See 2nd Kellogg Letter at 5-6.

163/ Curiously, these LECs would interpret Section 251(i) to exempt interexchange interconnection from its provisions, but would apply the Section 251 requirements to CMRS interconnection issues. See 2nd Kellogg Letter at 6-7.

164/ See Crandon v. U.S., 494 U.S. 152, 158 (1990) (the Supreme Court looks to "design of the statute as a whole"); Mountain States Tel. & Tel. v. Pueblo of Sante Ana, 472 U.S. 237, 249 (1985) ("statute should be interpreted so as not to render one part inoperative"); see also 2A Norman J. Singer, Sutherland Stat. Const. § 46.05 (statutes are "passed as a whole and not in parts or sections") and § 46.06 ("A statute should be construed so that effect is given to all its provisions.").

Sections 2(a), 2(b), 201 and 332 of the Communications Act. There is no evidence that Congress intended such a result, either from the text of the TCA or the legislative history. In fact, as shown above, Congress adopted Section 251(i) to avoid conflicts with the Commission's existing authority. Basic principles of statutory construction heavily disfavor interpretations that require implicit repeals of existing statutes.[165/] In light of the explicit Congressional direction to the contrary, the FCC cannot adopt an interpretation of Section 251 that, by implicit repeal, shrinks its jurisdiction over interconnection.

In contrast, Cox's interpretation of the TCA gives meaning to Section 251(i) by leaving the Commission's CMRS interconnection jurisdiction in place. It also reflects, in stark absence of any contrary evidence, Congress' satisfaction with the successful regulatory framework for CMRS it created in the 1993 Budget Act. While addressing the general interconnection obligations of LECs, Congress intentionally preserved Commission jurisdiction over CMRS interconnection under Section 332 (through its retention of Section 201). This shows Congress' intent to make substantial changes in the regulatory structure of

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165/ See St. Martin Evangelical Lutheran v. South Dakota, 451 U.S. 772, 787-88 (1981) (where "legislative history does not reveal any clear intent to repeal" or "alter [the] meaning" of a provision, there is no repeal by implication) citing Morton v. Mancari, 417 U.S. 535, 550 (1974); Radzanower v. Touche Ross & Co., 426 U.S. 148, 154-56 (1976) (where "it is possible for the statutes to coexist," even if it is inconvenient for them to do so, "they are not so repugnant to each other as to justify a finding of an implied repeal by this Court").

the wireline telephone industry to promote competition, while maintaining the structure of the wireless industry's previously-established, pro-competitive regulatory framework.[166/]

Even assuming that the TCA's interconnection provisions alone govern LEC-to-CMRS interconnection -- a position argued by some commenters,[167/] and to which Cox does not subscribe[168/] -- Section 251(d) of the TCA confirms that the TCA does not limit the FCC's exclusive jurisdiction over LEC-to-CMRS interconnection. Indeed, Section 251(d)

166/ Where Congress seeks to alter the regulatory framework of a service, its mandate has been direct and unambiguous. See, e.g., TCA § 304 ("The Commission's regulations and policies with respect to video dialtone requirements . . . shall cease to be effective on the date of enactment of this Act."). Counter arguments that Congress could have "explicitly" expanded FCC jurisdiction over CMRS interconnection in the TCA, if that was its intent, are simply illogical. See, e.g., CTDPUC Comments at 13. Congress specifically did not have to do this because the Budget Act already vested the Commission with plenary jurisdiction and preemption authority over CMRS interconnection. Moreover, Congress was aware of this proceeding while it was considering the TCA. If it believed that the Commission's tentative conclusions regarding jurisdiction or the value of bill and keep compensation were in error, it could have directed that the Commission end this proceeding, or to reach a different result, much as it did for the cellular equal access proceeding. See e.g., TCA § 705.

167/ See, e.g., PacBell Comments at 92; GTE Comments at 42-43; BellSouth Comments at 32.

168/ Cox reiterates herein its position that the FCC need not conduct a preemption analysis under Louisiana PSC in the face of clear statutory language that grants the FCC authority over what otherwise would be an intrastate matter. Contrary to the fatal flaw found in Louisiana PSC -- lack of statutory authority -- Congress in this case granted the FCC jurisdiction over CMRS interconnection in its modification of Sections 2(b) and 332 of the Communications Act. Compare Louisiana PSC, 476 U.S. at 374-76 (recognizing that Congress failed to grant FCC jurisdiction over depreciation matters in Section 2(b)). As such, a detailed preemption analysis is unnecessary and irrelevant to determining the FCC's authority to mandate bill and keep for LEC-to-CMRS interconnection.

expands the FCC's preemption power over interconnection issues by modifying the Louisiana PSC standard for preemption.

Under Louisiana PSC, the FCC may not preempt state regulation if: (i) it is possible to separate the intrastate and interstate portions of the service; or (ii) the state regulation is consistent with the federal purpose.[169] Unlike Louisiana PSC, however, Section 251(d)(3) does not require a finding that the interstate and intrastate portions of a telecommunications service cannot be separated for the Commission to preempt state regulation. Rather, the three-pronged preemption test under Section 251(d)(3) provides that:

> the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that: (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of [Section 251] and the purposes of [the competitive markets section of the TCA].[170]

Under Section 251(d)(3), the FCC may not preempt a state only when the state regulation meets all three prongs of the test. Conversely, the Commission may preclude enforcement of state regulation, order or policy that: (i) does not involve access and interconnection obligations of local exchange carriers; or (ii) is not consistent with the requirements of Section 251 or substantially prevents implementation of Section 251; or (iii) does substantially prevent implementation of the purposes of Section 251 or the competitive markets section of the TCA. While the two-pronged Louisiana PSC test requires the FCC to

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169/ See 476 U.S. at 372-376.

170/ See 47 U.S.C. § 251(d)(3) (emphasis added).

show both inseverability of intrastate and interstate matters and state frustration of a federal purpose to justify preemption, therefore, Section 251(d)(3) shifts the burden to authorize the FCC to preempt any state regulation that fails to meet any prong of the three-part statutory test. As such, FCC authority to dictate the terms of LEC-to-CMRS interconnection is reinforced by the TCA's preemption provisions.

Moreover, there are ample grounds for the Commission to preempt under the Section 251(d)(3) standard. There are many ways in which state actions could frustrate the Congressional intent to assure the swift emergence of wireless competition. For example, requiring individual state negotiations for wireless interconnection would seriously delay the deployment of nationwide wireless networks such as Sprint Spectrum. At the same time, because the Commission indisputably has jurisdiction over the CMRS-to-LEC half of the interconnection equation, letting states regulate the other half of the equation likely would undermine the Commission's implementation of the pro-competitive policies embodied in the TCA and the 1993 Budget Act. Indeed, states already have shown they will use interconnection policies to rein in potential competition from CMRS providers.[171/] Accordingly, even if Section 251(d)(3) were the only source of Commission authority to

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171/ For instance, a state could allow a LEC to charge a CMRS provider highly inflated interconnection rates that would preclude CMRS competition in the local residential telephone service market. See discussion supra at Section II.B.2.a(2).

assert its jurisdiction and preempt state wireless interconnection policies, these facts would be sufficient to justify such action.[172/]

c. The FCC Also Could Assert Jurisdiction Under the Analysis in Louisiana PSC.

As shown above, the FCC's jurisdiction over LEC-to-CMRS interconnection was established by the 1993 Budget Act amendments and is confirmed by the TCA. Nevertheless, even if the FCC chooses to apply the more stringent preemption test of Louisiana PSC, ignoring Sections 2(b), 201, 332 and 251(d) of the Communications Act, the same conclusion is compelled: the FCC has plenary jurisdiction over LEC-to-CMRS interconnection. Under the Louisiana PSC and North Carolina Utility Commission cases, the Commission can preempt inconsistent state regulation of intrastate services if it is "not possible to separate the interstate and the intrastate components of the asserted FCC regulation."[173/]

First, it is impossible to separate CMRS-to-LEC interconnection from LEC-to-CMRS interconnection because it is a single transaction.[174/] Indeed, some LECs actually claim that the rates they now charge for interconnection already are "net" rates, e.g. they encompass both the LEC's charge to the CMRS provider and the CMRS provider's charge to the

172/ The ability of the states to vitiate the important federal policy favoring competition adopted by the 1993 Budget Act and the TCA also satisfies the "frustration" prong of the Louisiana PSC test.

173/ See Louisiana PSC, 476 U.S. at 375 n. 4.

174/ See, e.g., Century Comments at 13; Centennial Comments at 29; Sprint & APC Comments at 39-40; PCIA Comments at 17.

LEC.[175] Thus, because negotiations over the mutual exchange of traffic involve interconnection, a single transaction between the LEC and the CMRS provider, the FCC's failure to claim jurisdiction over LEC-to-CMRS interconnection effectively would abdicate jurisdiction over CMRS-to-LEC interconnection as well.[176]

Commenters in this proceeding also have demonstrated that CMRS interconnection is physically inseverable.[177] CMRS market boundaries, e.g., MTAs and BTAs and regional cellular coverage areas, have been drawn without regard for state boundaries and radio signals used to carry CMRS traffic do not respect state lines. Indeed, often it is difficult if not impossible to determine not only whether a particular call would be deemed interstate or intrastate in nature under the pre-Budget Act scheme, but also what proportion of the calls would be deemed interstate or intrastate.[178] These physical characteristics of CMRS were a

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175/ See PacBell Comments at 79; see also supra note 135.

176/ Moreover, LEC comments recognize that the rates LECs charge CMRS providers for interconnection are reflected in the rates charged to CMRS customers. As such, the indistinguishable features of LEC and CMRS interconnection rates, and the impact interconnection rates have on consumer prices, mandate federal jurisdiction over the entire LEC-CMRS interconnection relationship.

177/ See Western Wireless Comments at 19; Vanguard Comments at 24-26; Time Warner Comments at 25; AirTouch Comments at 48-50; Sprint & APC Comments at 44-49; RCC Comments at 11-12; New Par Comments at 24; PCIA Comments at 19-23; CelPage Comments at 12-13; Nextel Comments at 14-16; AT&T Comments at 24-25; Century Comments at 14-16; CTIA Comments at 77-82.

178/ In the vast wireless world of interconnected networks, the use of proxies to register and settle issues of compensation between LECs and CMRS providers is unworkable. Attempts to manage, identify and qualify traffic as "interstate" or "intrastate" will only complicate CMRS interconnection at time when interconnection is particularly critical to

(continued...)

particularly important factors in the Congressional determination to adopt the 1993 Budget Act amendments to Section 332.[179/]

Moreover, reliance on stale pronouncements of the severability of LEC-to-cellular interconnection rates ignores the considerable development of CMRS service in the last six years. This is why, as discussed above, the Commission cannot reach back to the regime suggested in the 1987 Cellular Interconnection Order.[180/]

Finally, parsing CMRS interconnection into "federal" and "state" spheres and ceding jurisdiction to the states over LEC-to-CMRS interconnection will only perpetuate LEC efforts to manipulate the process to maintain excessive interconnection charges that prevent CMRS providers from competing in the local telephony marketplace. As the record demonstrates, without explicit federal action LECs have been able to impose inflated interconnection rates on potential competitors and deny mutual compensation to carriers who are wholly dependent on LEC facilities for the provision of their wireless services. Because the FCC has authority to prevent this anti-competitive outcome, it should not permit this practice to persist in contravention of its self-declared pro-competitive goals for CMRS.

178/ (...continued)
CMRS' competitive success. See GTE Comments at 22 ("Complicating the arrangement is the fact that current networks cannot and do not specifically identify interstate traffic versus intrastate traffic.").

179/ See House Report at 260 (recognizing that CMRS operates without regard to state lines).

180/ See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910, 2912 (1987). See also discussion supra at Section II.B.2.a(3).

d. Preemption of State Regulatory Authority Over LEC-to-CMRS Interconnection Does Not Violate the TCA's Prohibition on Discriminatory Interconnection Arrangements.

NARUC argues that preemption of LEC-to-CMRS interconnection "favors" wireless technology or otherwise constitutes "preferential" treatment in contravention of the TCA's prohibition on discriminatory interconnection agreements.[181/] NARUC's analysis misconstrues the unique statutory treatment afforded CMRS and ignores existing discriminatory practices that uniform federal regulation over LEC-to-CMRS interconnection would correct.

As discussed above, with the passage of the 1993 Budget Act, Congress sought to establish a "Federal regulatory framework to govern the offering of all commercial mobile services."[182/] At that time, Congress made clear that uniform laws are needed to ensure that all carriers providing CMRS are treated as common carriers under the Communications Act.[183/] Contrary to NARUC's claims, however, the FCC did not negate the possibility that CMRS providers would be subject to different common carrier obligations than wireline carriers. In fact, Section 332(c)(1)(A) of the 1993 Budget Act specifically granted the FCC authority to specify which provisions of Title II should and should not apply to CMRS

181/ See NARUC Comments at 3-4.

182/ See Conference Report at 490.

183/ Id.

providers.[184] The TCA did not in any way alter or repeal the forbearance authority granted by Section 332.

The provisions of the TCA also did not alter the unique framework established by Congress for the regulation of CMRS. Indeed, NARUC misses the fundamental point that Section 332 recognizes the significant and distinct interstate aspects of CMRS (vis-a-vis wireline networks) that compel federal regulation of CMRS. Claims that Congress required identical treatment for wireline and wireless service providers ignore the special treatment that Congress, not the FCC, bestowed on CMRS in 1993.

Finally, NARUC overlooks the existing discrimination against CMRS providers seeking intrastate interconnection under state law. As demonstrated in Section II.B.2.a(2) of these comments, CMRS providers are denied mutual compensation arrangements and other benefits made available by LECs to state-certified competitive local exchange carriers.[185] Adopting a uniform and pro-competitive mutual compensation scheme for all CMRS providers that includes bill and keep will not "prefer" wireless providers in seeking interconnection with the local loop; rather, it will ensure CMRS providers firmer footing in

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184/ See Section 332(c)(1)(A) ("A person engaged in the provision of a service that is a commercial mobile service, shall . . . be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person."); House Report at 259-260. Moreover, even differential regulation among providers of commercial mobile services is permissible under the statute. See Conference Report at 491.

185/ See, e.g., Connecticut Order at 15, 16 (contending that the establishment of a national framework in Section 332 permits the state to deny equal treatment to wireless providers).

an environment in which the LECs patently and offensively discriminate against CMRS interconnectors.[186/]

186/ Two-thirds of the states that have addressed the issue have adopted a bill and keep mechanism for interim interconnection compensation for landline interconnection, including some states, such as California, that deny the same arrangements to CMRS providers. Cox Comments at 5.

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTEREXCHANGE TRAFFIC.

The Commission should not address interexchange carrier access as part of this proceeding to adopt bill and keep as an interim compensation method for LEC-to-CMRS interconnection. As the comments show, there are many direct connections between CMRS providers and interexchange carriers today that are not the subject of controversy but of private negotiation.[187/] Consequently, while Cox generally agrees with the parties that support the Commission's tentative conclusion that CMRS providers should be able to recover some form of access charges from interexchange carriers,[188/] this issue will be more appropriately addressed during either the Commission's interconnection proceeding required by Section 251 of the TCA or during the Commission's promised general access charge reform proceeding.[189/]

187/ See, e.g., Sprint Comments at 16.

188/ See, e.g., 360° Comments at 9; New Par Comments at 26; PCIA Comments at 28.

189/ See CTIA Comments at 83; Comcast Comments at 47-48.

IV. APPLICATION OF THESE PROPOSALS: THE COMMISSION MUST APPLY ITS INTERIM BILL AND KEEP INTERCONNECTION POLICIES TO CELLULAR, PCS AND ESMR PROVIDERS.

A. The Commission Must Apply Its Interim Interconnection Policies to Cellular, PCS and ESMR Providers.

The Commission's proper focus in this proceeding is to make CMRS more widely available and affordable to American consumers and to foster competition between CMRS and incumbent LEC local services. As shown above, the Commission should adopt interim bill and keep policies because they provide the most efficient way to introduce and promote competition into the local telecommunications marketplace. Cox supports applying the interim bill and keep interconnection policies to all cellular, PCS and ESMR licensees. The long-term interconnection policies should apply to all CMRS providers capable of competing with incumbent LEC services.[190] Whether providers currently have sufficient spectrum to offer two-way services that compete with incumbent LEC services should not determine the scope of the incumbent LECs interconnection obligations. All two-way wireless systems that have the potential to compete for incumbent LEC customers should benefit from the Commission's procompetitive interconnection policies.

190/ There is general agreement among the commenting parties that the Commission's policy of regulatory symmetry demands that all similarly situated CMRS providers be included in these proposals. See, e.g., 360° Comments at 10; Vanguard Comments at 29; Time Warner Comments at 32; AirTouch Comments at 58; GSA Comments at 18; Century Comments at 18; Celpage Comments at 14; CCPR Comments at

Applying the Commission's bill and keep interconnection policies to cellular, ESMR and PCS providers is consistent with Section 332 of the Budget Act and the Commission's CMRS Second Report and Order. The Commission's CMRS Second Report and Order establishes that cellular and PCS providers are similar services that share disparities in market power when negotiating interconnection agreements with incumbent LECs. Given the significant interconnection input costs that cellular and PCS providers face, effective competition will only be realized if both providers have equal opportunities to obtain interconnection. Applying different interconnection policies to cellular and PCS providers will arbitrarily distort competition between them. Asymmetric interconnection policies allows regulation to pick market winners instead of competitive market forces. Therefore, the Commission should apply these proposals to PCS, cellular and ESMR providers.

B. Parties That Today Do Not Negotiate For Interconnection Should Not Be Included in the Commission's Interconnection Rules.

The underlying premise behind reciprocal compensation is that each provider is entitled to recover the costs of providing interconnected facilities or use a reasonable cost proxy such as bill and keep. Resellers lack facilities to provide interconnection and therefore should not be included in the Commission's interconnection rules.[191/] Resellers will benefit from the Commission's bill and keep policies in the prices they pay to facilities-based CMRS

191/ CRA, the sole representative of the cellular resellers in this proceeding, confines its comments to jurisdictional issues and the right of resellers to utilize their switch for interconnection. CRA's comments do not address specifically the issue of cost recovery or whether bill and keep is appropriate interconnection arrangement for its members. CRA Comments at 4.

providers.[192] In the resale context, there is nothing to apply bill and keep to because resellers and facilities-based CMRS providers do not currently negotiate interconnection agreements. As the Commission's pro-competitive interconnection policies drives prices down, resellers and facilities-based CMRS providers alike will pass these savings along to customers. Therefore, there is no need or obvious way to include resellers in these proposals.

192/ Section 251(c)(4) of the TCA recognizes that resellers, as purchasers of wholesale CMRS capacity, stand in a different pricing position than facilities-based providers that compete for local telecommunications customers.

V. RESPONSES TO INITIAL REGULATORY FLEXIBILITY ANALYSIS.

No comments at this time.

VI. OTHER.

No comments at this time.

VII. CONCLUSION.

The Commission should adopt without delay interim bill and keep compensation to govern LEC-CMRS interconnection as reflected in Cox's comments in this proceeding. The record amply supports swift and comprehensive federal action to correct inequities in the current model of CMRS interconnection. As graphically illustrated in the comments, the current model is anti-competitive and, if allowed to continue, will quash the potential of future wireless competition in the local loop.

Regardless of LEC rhetoric, one simple fact remains: the LECs have failed to provide any basis for preserving a system that allows the collection of monopoly rents from captive CMRS providers who depend on LEC facilities for the provision of wireless service. The Commission must seize this opportunity to establish an interconnection framework that promotes competition by basing reciprocal compensation for the transport and termination of traffic on forward-looking incremental cost, thereby providing incentives for LECs to provide more economic interconnection. Until these steps are taken, CMRS will remain a niche service, unable to compete for LEC customers. At this critical time in the development of

CMRS, the FCC must adopt bold measures to usher in a new era of competition in all telecommunications markets. Without direct federal leadership, the benefits promised by the 1993 Budget Act and the TCA will remain unrealized.

Respectfully submitted,

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March 25, 1996

Glossary of Acronyms for the
Commenters Who Filed in CC Docket No. 95-185
on March 4, 1996

AirTouch Communications, Inc. "(AirTouch")
Alaska Telephone Association ("ATA")
Alaska 3 Cellular Corporation d/b/a CellularOne
("CellularOne")
Alliance of Wireless Services Providers ("Alliance")
Allied Personal Communications Industry Association of California ("Allied")
ALLTEL Corporation ("ALLTEL")
American Mobile Telecommunications Association, Inc. ("AMTA")
American Personal Communications ("APC")
America's Carriers Telecommunications Association ("ACTA")
Ameritech ("Ameritech")
Anchorage Telephone Utility ("ATU")
Arch Communications Group, Inc. ("Arch")
AT&T Corp. ("AT&T")
Bell Atlantic ("Bell Atlantic")
Bell Atlantic Nynex Mobile, Inc. ("BANM")
BellSouth Corporation ("BellSouth")
California Public Utility Commission ("CPUC")
Cellular Communications of Puerto Rico, Inc. ("CCPR")
Cellular Mobile Systems of St. Cloud General Partnership ("CMS")
Cellular Resellers Association, Inc. ("CRA")
Cellular Telecommunications Industry Association ("CTIA")
Celpage, Inc. ("Celpage")
Centennial Cellular Corp. ("Centennial")
Century Cellunet, Inc. ("Century")
Cincinnati Bell Telephone ("Cincinnati Bell")
CMT Partners ("CMT")
Comcast Corporation ("Comcast")
Competitive Telecommunications Association ("CompTel")
Concord Telephone Company ("Concord")
Connecticut Department of Public Utility Control ("CTDPUC")
Cox Enterprises, Inc. ("Cox")
Florida Cellular RSA Limited Partnership ("Florida Cellular")
Frontier Corporation ("Frontier")
General Services Administration ("GSA")
GO Communications Corporation ("GO")
GTE Service Corporation ("GTE")
GVNW Inc./Management ("GVNW")
Hart Engineers ("Hart")
Home Telephone Company, Inc. ("Home")
ICO Global Communications ("ICO")
Illinois Telephone Association ("ITA")

John Staurulakis, Inc. ("Staurulakis")
LDDS Worldcom ("LDDS")
MCI Telecommunications Corporation ("MCI")
Michigan Exchange Carriers Association ("MECA")
National Association of Regulatory Utility Commissioners ("NARUC")
National Exchange Carrier Association, Inc. ("NECA")
National Telephone Cooperative Association ("NTCA")
New Par ("New Par")
New York State Department of Public Service ("NYDPS")
Nextel Communications, Inc. ("Nextel")
North Carolina 4 Cellular Limited Partnership ("NC4")
NYNEX ("NYNEX")
Ohio Public Utilities Commission ("PUCO")
Omnipoint Corporation ("Omnipoint")
Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO")
Pacific Bell, Pacific Bell Mobile Services and Nevada Bell ("PacBell")
Pacific Communication Sciences, Inc. ("PCSI")
Paging Network, Inc. ("PageNet")
Personal Communications Industry Association ("PCIA")
Point Communications Company ("Point")
Poka Lambro Telephone Cooperative ("Poka Lambro")
Puerto Rico Telephone Company ("PRTC")
Rural Cellular Association ("RCA")
Rural Cellular Corporation ("RCC")
SBC Communications Inc. ("SBC")
Smithville Telephone Company ("Smithville")
SouthEast Telephone Limited Partnership, Ltd. ("SouthEast")
Sprint Corporation ("Sprint")
Sprint Spectrum & American Personal Communications - Joint Comments ("Sprint & APC")
Telecommunications Resellers Association ("TRA")
Teleport Communications Group, Inc. ("Teleport")
Telmarc Group, Inc. ("Telmarc")
Time Warner Communications Holdings, Inc. ("Time Warner")
Union Telephone Company ("Union")
United States Telephone Association ("USTA")
U S West, Inc. ("U S West")
Vanguard Cellular Systems, Inc. ("Vanguard")
Western Radio Services Co., Inc. ("Western Radio")
Western Wireless Corporation ("Western Wireless")
Westlink Company ("Westlink")
360° Communications Company ("360")

STATEMENT OF GERALD W. BROCK

CMRS Interconnection Proceeding, CC Docket No. 95-185

March 25, 1996

I. Introduction

In previous papers submitted in this proceeding, I have argued in favor of Bill and Keep as an interim payment method for interconnection between CMRS providers and incumbent LECs. The essential points of that argument were as follows:

(1) Because interconnection of two carriers provides benefits to the customers of both carriers and therefore enhances the value of both networks, interconnection payments should be mutual and symmetric. That is, payments per unit of traffic from network A to network B as compensation to B for terminating traffic originated by A should be the same as payments per unit of traffic from network B to network A as compensation to A for terminating traffic originated by B.

(2) Ignoring transactions costs, the economic efficiency of interconnected networks is maximized when the payments for terminating traffic are set equal to the forward looking incremental cost of terminating that traffic.

(3) Because the cost of telecommunication networks is primarily determined by the maximum capacity of the network, the appropriate unit for computing the incremental cost of terminating traffic is peak capacity, not minutes. Off-peak minutes impose no additional cost on the terminating carrier.

(4) A careful study of the incremental cost of local service with digital technology showed an annual cost of approximately $5.00 to add a minute of peak capacity to the local exchange network. Using typical California traffic patterns, that results in an average incremental cost of approximately $.002 per minute total traffic including both peak and off peak minutes.

(5) If traffic is balanced, symmetrical mutual compensation payments for interconnection result in zero net payments between interconnected carriers regardless of the level of charges for terminating traffic.

(6) Even if traffic is not balanced, Bill and Keep is an efficient mechanism if the transactions costs of measuring traffic and collecting payments for the excess inbound traffic are greater than the efficiency losses created by setting terminating traffic compensation levels at zero rather than at forward looking incremental cost.

(7) In the competitive unregulated Internet, major service providers interconnect with each other and terminate traffic originated by other providers on a Bill and Keep basis as a private business choice.

While numerous parties supported the Commission's tentative conclusion to adopt an interim Bill and Keep (BAK) proposal for CMRS interconnection, the LECs generally opposed the proposals and challenged each of the points that led to the BAK proposal. In addition, they argued that the passage of the Telecommunications Act of 1996 (TCA) after the NPRM was issued made the Commission's analysis obsolete and argued that CMRS interconnection issues should be decided in the context of the TCA implementation rulemakings. In this statement, I show that the Commission's NPRM is consistent with the TCA and respond to selected criticisms of my earlier arguments.

II. The Telecommunications Act of 1996

Numerous commenters have urged the Commission to settle the CMRS interconnection issues in the context of implementing the TCA rather than through this proceeding. Those parties urge that this proceeding be terminated and appear to assume that the provisions developed to implement the TCA will be substantially different from the provisions proposed in the CMRS NPRM. However, it is possible to adopt rules in this proceeding that advance the Commission's policy objectives with regard to CMRS carriers and that also advance the Commission's efforts to implement the TCA.

The interconnection requirements specified in the TCA include the following elements:

(1) Negotiated interconnection arrangements among carriers;

(2) Binding arbitration in case of failure to agree;

(3) Payment for transport and termination based on "mutual and reciprocal recovery" of costs incurred;

(4) Cost determined by "a reasonable approximation of the additional costs of terminating such calls."

(5) Authorization for "the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."

In order to implement the interconnection provisions of the TCA, the Commission needs to:

(1) Clarify the meaning of "mutual and reciprocal recovery" when carriers have disparate costs;

(2) Clarify the standards for computing "a reasonable approximation of the additional costs of terminating such calls;"

(3) Provide a negotiating framework that provides incentives for the parties to reach agreement.

Several parties in the CMRS proceeding have challenged the use of Bill and Keep even when traffic is balanced because the cost of terminating traffic may be different among the interconnecting carriers. When costs are equal and traffic is balanced, each party recovers its costs through BAK because the cost-based payments exactly offset each other. If costs are unequal, then BAK does not precisely allow recovery of costs by both parties. For example, assume that carrier A incurs a cost of $5.00 per year to provide one hundred call seconds (one CCS) of peak capacity while carrier B incurs a cost of $10.00 per year to provide one CCS of peak capacity. If each party terminates 1000 CCS for the other at the peak period, A incurs a cost of $5,000 to provide terminating services for B while B incurs a cost of $10,000 to provide terminating services for A. BAK (or any other system with equal payments for traffic in either direction) cannot precisely compensate both parties for the costs they incur.

Precise matching of prices to termination cost requires different prices in each direction when the termination cost differs among carriers. However, abandoning the reciprocity principle greatly complicates either a bargaining process or a regulatory process for determining interconnection compensation. If reciprocity is not required, then both parties have an incentive to argue that their costs are highest. The contracts become complex and difficult to negotiate because there is no clear focal point. It is desirable to reduce the complexity of the contracts and to simplify the bargaining process. Reciprocal